

- This week the Senate may see an extreme example of how the minority can abuse its rights in a way that provokes the majority into an excessive use of its power.
- I come to the floor today to offer to my Democrat colleagues a way to avoid both mistakes.
- Here is the abuse of minority rights: more than a year ago President Trump nominated John Ryder of Memphis to serve on the Board of Directors of the Tennessee Valley Authority (TVA) based on the recommendation that Senator Corker and I made.
- Finally, this week Senate may vote on his nomination.
- Well, you might say, there must be something really wrong with Mr. Ryder. If there is, then all the people who are supposed to find out what is wrong with him have not found it.
- Senator Corker, Senator Blackburn and I know him as one of Tennessee's finest attorneys.
- After a hearing at which Mr. Ryder answered questions, Republican and Democrat Members of the Senate Environment and Public Works Committee approved his nomination by unanimous consent. No, there is no problem with Mr. Ryder.
- Or, you might say, this must be a position of overwhelming importance. TVA is in the nation's largest public utility and it is important to its 9 million customers in seven states. But this is not a lifetime appointment or a Cabinet position or even a full time employee of the federal government. This is one of nine part-time board positions, and nominees are normally approved by voice vote.
- The problem is not with Mr. Ryder or because of the unusual importance of the position.
- The problem is the determination of the Democrat minority to make it nearly impossible for President Trump to form a government, to fill the 1,200 federal government positions that require confirmation by the United States Senate as part of our constitutional responsibility to advice and consent to nominations.
- So this is where we are, Democrats have objected to the majority leader's request to vote on Mr. Ryder's nomination. So, in order to vote, the majority leader has filed a cloture petition to cut off debate on Mr. Ryder's nomination.
- The cloture process takes at least three days: the first day you file cloture, the second day is the so-called intervening day when no action can be taken, and on the third day the Senate votes to invoke cloture and then there is up to 30 more hours for post-cloture debate before the Senate finally can vote on whether to confirm Mr. Ryder.

- Unfortunately, Mr. Ryder is not the only victim of such obstructionism.
- During the last two years, Democrats have done this 128 times. 128 times they have required the majority leader to consume up to three days of floor time to force a vote on a presidential nominee.
- By comparison, requiring a cloture vote to advance a nomination happened 12 times during President Obama's first two years; four times during George W. Bush's first two years; 12 times during Bill Clinton's first two years and not once during George H.W. Bush's first two years in office.
- This unnecessary obstruction has to change. The result of this extraordinary delay in considering nominees creates a government filled with acting appointees who, never having gone through the confirmation process, are less accountable to Congress and the American people.
- And so at a time when many complain that the Executive has become too powerful, the Senate is deliberately making itself weaker by diminishing our constitutional duty to advice and consent to individuals nominated to fill important positions, perhaps the Senate's best known role.
- This abuse of power by the minority is about to produce an excessive reaction by the majority —something I would think at least nine Democrats who can see two years ahead would want to avoid.
- At least 9 Democrat senators hope to be the next President of the United States. Do they not know that some Republican will do to the next Democrat president's nominees what Democrats have done to President Trump's nominees?
- The Senate is a body of precedent. What goes around comes around. All it takes is one Republican senator objecting to a unanimous consent request to make it difficult for the next Democrat president to form a government and to continue this diminishment of the United States Senate.
- CAN Republican senators, by majority vote, change Senate rules to stop this obstructionism?
- Yes. We can and will, if necessary.
- There are several ways to change the rules of the Senate – we can amend the Standing Rules of the Senate, we can adopt a standing order, we can pass a law, we can set a new precedent, or we can change the rules by unanimous consent.
- The written rules of the Senate say it requires 67 votes to amend a Standing Rule and 60 votes to amend a standing order.

- And there is recent precedent to change the Senate rules by majority vote. In 2013, Democrat Majority Leader Harry Reid used a procedural maneuver — let's call it the Harry Reid precedent— that allowed the Democrat Senate majority to overrule the chair and say, in effect, that a written Senate rule does not mean what its words say.
- This is as if a referee in a football game were to say, the rule book says that a first down is ten yards but I am the referee and I am ruling that it is nine yards.
- In 2017, a Republican majority followed this Harry Reid precedent in order to make cloture on all nominations a majority vote. And now Republicans are on the verge of following the Harry Reid precedent again.
- SHOULD Republicans do this, change a rule by majority vote when the written rules require 60 or 67 votes?
- The answer is no, not if we can avoid it.
- As Democrat Senator Carl Levin said in 2013, a Senate in which a majority can change the rules at any time is a Senate without any rules.
- Thomas Jefferson, who wrote the first Senate rules, said that it did not make much difference what the rules are, just that there are SOME rules.
- It is at least awkward for members of the country's chief rule writing body to expect Americans to follow the rules we write when we don't follow our own written rules.
- And, I have heard many Democrats privately express regret that they established the Harry Reid precedent in 2013.
- So what would be the right thing to do, something that avoided both the minority's abuse of its rights and the majority's excessive response?
- We should do what the Senate did in 2011, 2012 and 2013 when Republicans and Democrats worked together to make it easier for President Obama—and his successors—to gain Senate confirmation of presidential nominees.
- As a Republican senator I spent dozens of hours on this bipartisan project to make it easier for a Democrat President with a Democrat Senate majority to form a government.
- We changed the rules the right way – the Senate passed standing orders with bipartisan support and a new law, the Presidential Appointment Efficiency and Streamlining Act, which eliminated confirmation for several positions.
- We accomplished a lot:
 - Eliminated secret holds, after over 25 years of bipartisan effort, by Senators Grassley and Wyden;

- Eliminated delays caused by the reading of amendments;
 - Eliminated Senate confirmation of 163 major positions;
 - Eliminated confirmation of 3,163 minor career positions;
 - Made 272 positions “privileged nominations” which means these nominations can move faster through the Senate;
 - Sped up motions to proceed to legislation;
 - Made it easier to go to conference; and
 - Limited post-cloture debate on subcabinet positions to 8 hours and on federal district judges to 2 hours for the 113th Congress.
- All of these changes took effect immediately or within sixty days.
 - Republicans did not insist that these new rules should be delayed until after the next presidential election when there might be a Republican president. Republicans supported these changes for the benefit of the institution even though they would immediately benefit a Democrat president and a Democrat Senate majority.
 - I propose that we do that again.
 - I invite my Democrat colleagues to join me in demonstrating the same sort of bipartisan respect for the Senate as an institution that Senators Reid, McConnell, Schumer, Barrasso, Levin, McCain, Kyl, Cardin, Collins, Lieberman, and I did in 2011, 2012, and 2013 when we worked together to change the Senate rules the right way.
 - Two weeks ago, the Rules Committee gave us an opportunity to do things the right way by reporting to the Senate a resolution sponsored by Senator Lankford and Senator Blunt, the chairman of the Rules Committee.
 - This resolution, which is similar to the Standing Order that 78 senators voted for on January 14, 2013, would reduce post cloture debate time for nominations.
 - District court judges would be debated for 2 hours, the same as the 2013 standing order, and other subcabinet positions would be subject to 2 hours of post-cloture debate as well.
 - The proposal offered by Senator Lankford and Senator Blunt would not reduce the post-cloture debate time for Supreme Court, Cabinet, circuit court, or certain board nominations but would divide the 30 hours of post-cloture debate equally between Republicans and Democrats.

- The Lankford-Blunt proposal would put the Senate back where it has historically been on nominations.
- With rare exceptions, Senate nominations have always been decided by majority vote.
- President Johnson's nomination of Abe Fortas as Chief Justice of the Supreme Court was the only example of a Supreme Court nominee who was blocked by requiring more than 51 votes.
- There has never been a Cabinet nominee or district judge whose nomination has been defeated by requiring more than a majority vote even though since 1949, Senate Rules have allowed one senator to insist on a cloture vote which requires more than a majority to end debate. Even though it was allowed; it just wasn't done.
- Even the vote on the acrimonious nomination of Clarence Thomas to serve as a Justice on the Supreme Court was decided by a majority vote of 52-48. No senator tried to block the nomination by requiring 60 votes on a cloture motion.
- Only when Democrats began in 2003 to block President George W. Bush's nominees by insisting on a 60 vote cloture vote did that tradition change.
- Then, in 2017, using the Harry Reid precedent, Republicans restored the tradition of requiring a majority vote to approve all presidential nominees.
- Also until recently, with rare exceptions, nominees have been considered promptly.
- For example, last month I was in Memphis for the investiture of Mark Norris, whose nomination languished for 10 months on the Senate calendar. The evening before I had dinner with 94 year old Harry W. Wellford. In November 1970, Sen. Howard Baker had recommended Harry Wellford to serve as a district court judge on the same court where Mark Norris now serves.
- By December 11, 1970, one month later, President Nixon had nominated him and the Senate had confirmed him. Not all nominations have moved that swiftly.
- In 1991, a Democrat senator using a secret hold blocked my nomination as Education Secretary. I waited on the calendar for six weeks. Those six weeks seemed like an awfully long time to me and that was for a cabinet position—not for a part time board position for the Tennessee Valley Authority.
- Two weeks ago, I voted to report Senator Lankford and Senator Blunt's resolution to the full Senate even though no Democrat voted for it.

- I will vote for it again on the floor even if no Democrat joins us.
- I will also join my fellow Republicans if we are forced to change the rules by majority vote.
- I do not like the Harry Reid precedent, but I like even less the debasement of the Senate's constitutional power to provide advice and consent to 1,200 presidential nominations.
- My preference is to adopt Senator Lankford and Senator Blunt's resolution, which is very similar to the resolution which 78 senators voted for in 2013, and to do it according to the written Senate Rules as we did in 2013.
- I believe most Democrats privately agree that the resolution offered by Senator Lankford and Senator Blunt is reasonable and that they will be grateful that it is in place when there is a Democrat majority.
- Their only objection seems to be that it would apply to President Trump.
- The other major objection, which is truly puzzling, is that the proposed change is permanent and the change we made in 2013 was temporary.
- Would Democrats like it better if we made this change in the Senate rules temporary, only applying to the remainder of President Trump's term?
- So this is my invitation to my Democrat colleagues: Join me and Senators Lankford and Blunt in supporting their resolution—or modifying it if you believe there is a way to improve it—and work in a bipartisan way exactly as we did in 2011, 2012, and 2013.
- A year or so ago one of the Supreme Court Justices was asked, "How do you Justices get along so well when you have such different opinions?"
- The Justice's reply was, "We try to remember that the institution is more important than any of our opinions."
- We senators would do well to emulate the Supreme Court Justices in respecting and strengthening this institution in which we are privileged to serve.
- One way to do that is to join together to restore the prompt consideration of any president's 1,200 nominees and to do it in a bipartisan way that shows the American people that our written rules mean what they say.

